

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Eric Maurice Wright,

Civil 10-517 MJD/FLN

Petitioner,

v.

O R D E R and REPORT &
RECOMMENDATION

Jessica Symms, Warden,

Respondent.

The above referenced Petition for a Writ of Habeas Corpus was dismissed in June 2010, because the Petitioner waited over two years after the expiration of the Statute of Limitations to file his Petition. [## 8;12] In August, Judge Davis construed several papers the Petitioner filed [##13-15] to be a Motion to Vacate the Final Order of Dismissal, and denied it. [##16] Petitioner has since filed several more papers on September 15, 2010: “Motion For Judicial Notice of Adjudicative Fact(s)” [##21]; “Petition Praying for Permission to Appeal” [##22]; “Motion Ex Parte for Review of the Merits” [##24]; “Motion for Certificate of Appealability” [##26]

Many of the arguments made in the various papers Petitioner has filed are arguments he has previously made in other documents. Petitioner is not entitled to any of the relief he seeks in his “Motion for Judicial Notice of Adjudicative Fact(s)” [##21], or “Motion Ex Parte for Review of the Merits” [##24]. Those motions will be DENIED.

The Court notes that Petitioner has filed an appeal of this matter to the Eighth Circuit Court of Appeals [##18]. The “Petition Praying for Permission to Appeal” [##22] and the “Motion for Certificate of Appealability” [##26] do require the attention of the Court. Under Title 28 United States Code, Section 2253 a habeas petitioner can only appeal a final order in a habeas proceeding if he has been granted a certificate of appealability. Such a certificate may issue only

if the applicant has made a substantial showing of the denial of a constitutional right. If the District Court denies the request for a certificate, the applicant can request a certificate from a Circuit Judge. Federal Rule of Appellate Procedure 22 (b).

This matter has been dismissed under the Statute of Limitations because Petitioner waited over two years after the limitations period expired to file his Petition. He has failed to show that the dismissal involved the denial of any constitutional right.

ORDER

Based upon all of the files, records and proceedings herein, Petitioner's "Motion for Judicial Notice of Adjudicative Facts" [#21] and "Motion Ex Parte for Review of the Merits" [#24] are DENIED.

RECOMMENDATION

Based upon all of the files, records and proceedings herein, it is hereby RECOMMENDED that the "Petition Praying for Permission to Appeal" [#22] and "Motion for Certificate of Appealability" [#26] be DENIED.

DATED: September 24, 2010.

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **October 12, 2010**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.